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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

HCL PARTNERS LIMITED PARTNERSHIP, On Behalf of Itself and All Others Similarly Situated, Plaintiff, vs. LEAP WIRELESS INTERNATIONAL, INC., et al., Defendants.	No. 3:07-cv-02245-BTM(NLS) CLASS ACTION MEMORANDUM OF LAW IN SUPPORT OF ALASKA ELECTRICAL PENSION FUND AND GENESEE COUNTY EMPLOYEES' RETIREMENT SYSTEM'S MOTION FOR APPOINTMENT AS LEAD PLAINTIFF, APPROVAL OF THEIR SELECTION OF LEAD COUNSEL AND CONSOLIDATION OF RELATED ACTIONS DATE: March 28, 2008 TIME: 11:00 a.m. COUTROOM: 15 Hon. Barry Ted Moskowitz

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I. INTRODUCTION

Alaska Electrical Pension Fund ("Alaska") and Genesee County Employees' Retirement System ("Genesee") respectfully submit this memorandum of law in support of their motion for: (i) consolidation; (ii) appointment as lead plaintiff in the above-referenced action pursuant to the Private Securities Litigation Reform Act of 1995 ("PSLRA"), 15 U.S.C. §78u-4; and (iii) approval of their selection of Labaton Sucharow LLP ("Labaton Sucharow") as lead counsel and Coughlin Stoia Geller Rudman & Robbins LLP ("Coughlin Stoia") as liaison counsel for the class. *See generally In re Cavanaugh*, 306 F.3d 726 (9th Cir. 2002).

Presently pending in this district are four securities class action lawsuits (the "Related Actions") brought on behalf of persons who purchased or otherwise acquired securities of Leap Wireless International, Inc. ("Leap" or the "Company"):

CASE NAME	CASE NO.	DATE FILED
HCL Partners LLC v. Leap Wireless Int'l Inc.	07-2245	11/29/07
Charek v. Leap Wireless Int'l Inc.	07-2256	11/29/07
Campbell v. Leap Wireless Int'l Inc.	07-2297	12/7/07
Carmichael v. Leap Wireless Int'l Inc.	08-0128	1/23/08

The Related Actions assert claims against Leap and certain of its officers and/or directors for violations of §§10(b) and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §§78j(b) and 78t(a), and Securities and Exchange Commission ("SEC") Rule 10b-5, 17 C.F.R. §240.10b-5. Pursuant to the PSLRA, the Court must first decide whether to consolidate the Related Actions prior to selecting a plaintiff to lead this litigation on behalf of the putative class. *See* 15 U.S.C. §78u-4(a)(3)(B)(ii); *Ruland v. Infosonics Corp.*, 2006 U.S. Dist. LEXIS 79144, at *4 (S.D. Cal. 2006) (Moskowitz, J.). Here, as discussed below, the Related Actions should be consolidated because they each involve similar issues of law and fact. *See id*.

As soon as practicable after consolidation, the Court is to appoint as lead plaintiff the "person or group of persons" with the largest financial interest in the relief sought by the class that otherwise satisfy the requirements of Fed. R. Civ. P. 23. 15 U.S.C. §78u-4(a)(3)(B)(iii). Here, to their knowledge, Alaska and Genesee have the largest financial interest and, as institutional investors, satisfy the requirements of Rule 23 for purposes of this Motion. *Ruland*, 2006 U.S. Dist. LEXIS 79144, at *5-*7.

II. STATEMENT OF FACTS

Leap is a wireless communications carrier that offers digital wireless service under the Cricket Communications, Inc. ("Cricket") and Jump Mobile brands in the United States. Leap is headquartered in San Diego, California. During the Class Period, defendants issued materially false and misleading statements regarding the Company's business and prospects. As a result of defendants' false statements, Leap stock traded at artificially inflated prices during the Class Period, reaching its all-time high of $98.33 per share in July 2007.

Then, on November 9, 2007, before the market opened, the Company issued a press release entitled "Leap Announces Restatement of Prior Period Results; Company Also Releases Preliminary Financial Results for the Third Quarter and Business Outlook for Fourth Quarter of 2007." As a result of this announcement, Leap's stock collapsed $21.38 per share to close at $36.72 per share, a one-day decline of 36% on volume of 11.3 million shares, 10 times the average three-month volume.

The true facts, which were known by defendants but concealed from the investing public during the Class Period, were as follows: (i) the Company's financial statements were materially misstated due to its failure to properly account for its service revenue in violation of Generally Accepted Accounting Principles ("GAAP"); (ii) the Company's financial statements were materially misstated due to its failure to properly account for its equipment revenue and cost of equipment in violation of GAAP; (iii) the Company lacked requisite internal controls, and, as a result, the Company's projections and reported results issued during the Class Period were based upon defective assumptions and/or manipulated facts; and (iv) given the Company's exposure to subprime consumers and the intense competition in the low-cost cell carriers market Leap was facing, the Company had no reasonable basis to make projections about its ability to maintain its customer turnover rate and net customer additions. As a result, the Company's projections issued during the Class Period were at a minimum reckless.

After the above revelations seeped into the market, the Company's shares were hammered by massive sales, sending them down 62% from their Class Period high.

III. ARGUMENT

A. The Related Actions Should Be Consolidated

"If more than one action on behalf of a class asserting substantially the same claim or claims arising under this chapter has been filed," the court shall not appoint a lead plaintiff until "after the decision on the motion to consolidate is rendered." 15 U.S.C. §78u-4(a)(3)(B)(ii). Under Rule 42(a), consolidation is appropriate when the actions involve common questions of law or fact. *See* Fed. R. Civ. P. 42(a); *see also Manual for Complex Litigation* §20.123, at 13-14 (3d ed. 1995). Courts recognize that class action shareholder suits, in particular, are ideally suited to consolidation pursuant to Rule 42(a) because their unification expedites pretrial proceedings, reduces case duplication and minimizes the expenditure of time and money by all persons concerned. *See Serafimov v. Netopia, Inc.*, 2004 U.S. Dist. LEXIS 25184, at *4-*5 (N.D. Cal. 2004).

Here, the Related Actions present virtually identical factual and legal issues – each alleges violations of §§10(b) and 20(a) of the Exchange Act and SEC Rule 10b-5 and each names the same defendants. Because these Related Actions are based on the same facts and involve the same subject matter, the same discovery will be relevant to all lawsuits. *See Weisz v. Calpine Corp.*, 2002 U.S. Dist. LEXIS 27831, at *7-*13 (N.D. Cal. 2002). Thus, consolidation is appropriate. *See Infosonics*, 2006 U.S. Dist. LEXIS 79144, at *4.

B. Alaska and Genesee Should Be Appointed as Lead Plaintiff

The PSLRA sets forth the procedures regarding the appointment of a lead plaintiff in a securities class action. 15 U.S.C. §78u-4(a)(1)-(3)(B)(i). First, the plaintiff who files the initial action must publish a notice within 20 days of filing the action advising the class of their right to file a motion for appointment as lead plaintiff. 15 U.S.C. §78u-4(a)(3)(A)(i). Here, the relevant notice was published on November 27, 2007, over *Market Wire*. *See* Declaration of Ramzi Abadou in Support of Alaska Electrical Pension Fund and Genesee County Employees' Retirement System's Motion for Consolidation, Appointment as Lead Plaintiff and Approval of Their Selection of Lead Counsel ("Abadou Decl."), Ex. C. Within 60 days after publication of notice, members of the proposed class are entitled to move to be appointed as lead plaintiff, regardless of whether they have previously filed a complaint in the action. 15 U.S.C. §78u-4(a)(3)(A)-(B).

Next, the PSLRA provides that within 90 days after publication of notice, the court shall appoint as lead plaintiff the member of the class that the court determines to be "most capable" of adequately representing the interests of class members. 15 U.S.C. §78u-4(a)(3)(B). In determining the "most adequate plaintiff," the PSLRA provides that:

> [T]he court shall adopt a presumption that the most adequate plaintiff in any private action arising under this [Act] is the person or group of persons that –
>
> (aa) has either filed the complaint or made a motion in response to a notice . . .;
>
> (bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and
>
> (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. §78u-4(a)(3)(B)(iii).

1. Alaska and Genesee Have Timely Moved for Appointment as Lead Plaintiff

The notice published pursuant to the PSLRA on November 27, 2007, advised class members of the existence of the securities class action lawsuit against Leap and certain of its officers and directors, the claims asserted therein, the Class Period and their right to move for lead plaintiff. *See* Abadou Decl., Ex. C. Alaska's and Genesee's motion is timely filed within 60 days from the publication of that notice. *See* 15 U.S.C. §78u-4(a)(3)(A)(i).

2. Alaska and Genesee Possess the Largest Financial Interest in the Relief Sought by the Class

To the best of their knowledge, Alaska and Genesee have the largest financial interest in the relief sought in this case – a loss of approximately $200,000 in connection with their purchase of Leap securities. *See* Abadou Decl., Ex. B; *Cavanaugh*, 306 F.3d at 730 ("[T]he district court must compare the financial stakes of the various plaintiffs and determine which one has the most to gain from the lawsuit.").

3. Alaska and Genesee Meet the Requirements of Rule 23

In addition to possessing the largest financial interest in the relief sought by the class, the lead plaintiff must also "otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure." 15 U.S.C. §78u-4(a)(3)(B)(iii)(I)(cc). With respect to the qualifications of lead plaintiffs, Rule 23(a) requires generally that their claims be typical of the claims of the class and that the representatives will fairly and adequately protect the interests of the class. *See* Fed. R. Civ. P. 23. As detailed below, Alaska and Genesee satisfy the typicality and adequacy requirements of Rule 23(a).

a. Alaska's and Genesee's Claims Are Typical of the Claims of the Class

The typicality requirement of Rule 23(a)(3) is satisfied when representative plaintiff's claims arise out of the same event or course of conduct as do the other class members' claims, and are based on the same legal theories. *In re Advanced Tissue Scis. Sec. Litig.*, 184 F.R.D. 346 (S.D. Cal. 1998). The threshold typicality and commonality requirements are not high. Rule 23(a) requires only that resolution of the common questions affect all, or a substantial number of, class members. *Slaven v. BP Am., Inc.*, 190 F.R.D. 649, 657 (C.D. Cal. 2000). The questions of law and fact common to the members of the class which predominate over questions which may affect individual class members include the following:

1. Whether the defendants' acts or omissions violated the federal securities laws;

2. Whether defendants omitted and/or misrepresented material facts;

3. Whether defendants knew, had reason to know or recklessly disregarded that their statements were false and misleading;

4. Whether the price of Leap common stock was artificially affected during the Class Period; and

5. The extent of damage sustained by class members, and the appropriate measure of damages.

There is a well-defined community of interest in the questions of law and fact involved in this case, of which Alaska and Genesee are a part. Alaska and Genesee, as well as other members of the class, allege that defendants violated the Exchange Act and SEC Rule 10b-5, 17 C.F.R. §240.10b-5, by publicly disseminating materially false and misleading statements, as well as statements which omitted material facts, about Leap during the Class Period. As a result of defendants' fraudulent representations and omissions, Alaska and Genesee, as well as all other members of the class, purchased Leap securities at artificially affected prices and were damaged thereby.

Because Alaska's and Genesee's claims are premised on the same legal and remedial theories and are based on the same types of alleged misrepresentations and omissions as the class' claims, typicality is satisfied. *See Advanced Tissue Scis.*, 184 F.R.D. at 249-50; 7 Herbert B. Newberg & Alba Conte, *Newberg on Class Actions* §22.24, at 107-08 (4th ed. 2002) ("The majority of class action decisions support the view that when it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is met.").

b. Alaska and Genesee Will Fairly and Adequately Represent the Interests of the Class

Alaska's and Genesee's interests are clearly aligned with the members of the class and there is no antagonism between their interests and the class members' interests. Alaska and Genesee have amply demonstrated their adequacy as class representatives by signing sworn certifications affirming their willingness to serve as, and to assume the responsibilities of, class representatives. Abadou Decl., Ex. A. In addition, Alaska and Genesee have selected counsel highly experienced in prosecuting securities class actions to represent them and the class. Abadou Decl., Exs. D, E.

C. This Court Should Approve Alaska's and Genesee's Choice of Lead and Liaison Counsel

The PSLRA vests authority in the lead plaintiff to select and retain counsel to represent the class, subject to court approval. *See* 15 U.S.C. §78u-4(a)(3)(B)(v). The court should not disturb lead plaintiff's choice of counsel unless necessary to "protect the interests of the class." 15 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa); *see Cavanaugh*, 306 F.3d at 733 n.11 ("the district court must approve the lead plaintiff's choice of counsel, but Congress gave the lead plaintiff, and not the court, the power to select a lawyer for the class"); *Advanced Tissue Scis.*, 184 F.R.D. at 353. Here, Alaska and Genesee have selected Labaton Sucharow as lead counsel and Coughlin Stoia as liaison counsel for the class. The Court may be assured that in the event this Motion is granted, the members of the class will receive the highest caliber of legal representation available from Labaton Sucharow and Coughlin Stoia. *See* Abadou Decl., Exs. D, E; *Borochoff v. Glaxosmithkline PLC*, 246 F.R.D. 201, 2007 U.S. Dist. LEXIS 74621, at *11 (S.D.N.Y. 2007) ("Coughlin Stoia Geller Rudman & Robbins LLP . . . is well qualified and has successfully served as lead counsel . . . in numerous complex securities class actions."); *In re Waste Mgmt., Inc. Sec. Litig.*, 128 F. Supp. 2d 401, 432 (S.D. Tex. 2001) (Labaton Sucharow "ha[s] been shown to be knowledgeable about and experienced in federal securities class fraud actions.").

IV. CONCLUSION

For all the foregoing reasons, Alaska and Genesee respectfully request that the Court: (1) consolidate the Related Actions pursuant to Fed. R. Civ. P. 42(a); (2) appoint them as Lead Plaintiff pursuant to §21D(a)(3)(B) of the Exchange Act; and (3) approve their selection of Labaton Sucharow as Lead Counsel and Coughlin Stoia as Liaison Counsel for the class.

DATED: January 28, 2008

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 28, 2008.

s/ Ramzi Abadou
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Manual Notice List

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- `(No manual recipients)`